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Washington, DC 20224

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Person To Contact:

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Refer Reply To:

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PLR-128365-06

Date:

October 17, 2006

LEGEND:

Distributor =

Sub1 =

Sub2 =

Sub3 =

Newco =

Purchaser =

Country Y =

State A =

Business A =

Business B =

Discontinued Business =

Date 1 =

Date 2 =

D Assets =

E Assets =

m =

n =

p =

Dear :

This letter responds to your May 30, 2006, request for rulings on certain federal income tax consequences of a proposed transaction. The information provided in that letter and in later correspondence is summarized below.

Summary of Facts

Distributor is the common parent of an affiliated group that files consolidated federal income tax returns. Distributor, directly and indirectly conducts several businesses including Business A and through Sub3, Business B.

Distributor has outstanding two classes of common stock, Class A and Class B. Both classes of stock are publicly traded and possess the same rights in the event of a liquidation of Distributor. The majority of the outstanding Class A stock and a significant portion of the Class B stock are closely held. The remaining shares of both classes are widely held.

Prior to Date 1, Distributor owned all of the stock of Sub1, a State A corporation. Sub1 conducted the Discontinued Business directly and through its wholly owned subsidiary, Sub2, a Country Y company.

On Date 1, Distributor sold all of the stock of Sub1 to Purchaser, an unrelated third party, for approximately m dollars in cash (the "Sub1 Sale"). Distributor and Purchaser have agreed to make a joint § 338(h)(10) election to treat the purchase of the Sub1 stock as an asset sale. Distributor deposited the proceeds of this sale in an account segregated from all other funds of Distributor (the "Segregated Account"). Distributor will invest funds from the Segregated Account in a separate portfolio apart from other Distributor investments (the "Temporary Investments").

Prior to the sale of the Sub1 stock, Sub1 distributed to Distributor the D Assets, the E Assets and the stock of Sub2. At that time, Distributor had outstanding an intercompany receivable due from Sub1 totaling approximately p dollars. The intercompany debt will be satisfied from amounts realized on the sale of the distributed E assets and, to the extent necessary, from the Proceeds (as defined below). The E Assets are non-business assets and amounts realized from their sale will not be included in the Proceeds.

On Date 2, Distributor sold the D Assets for approximately n dollars. The proceeds were deposited to the Segregated Account. Distributor has not sold the stock or the assets of Sub2. The Sub1 Sale, the future sale of Sub2 and the sale of the D Assets are collectively referred to as "the Asset Sales."

Proposed Distribution

Distributor has decided it is in the best interest of Distributor and its shareholders to distribute the Net Proceeds (as defined below) to the Distributor shareholders. Distributor proposes to take the following steps to effect such distribution (collectively, the "Proposed Distribution"):

- (i) Distributor will sell or otherwise dispose of the assets of Sub2 and liquidate Sub2 in a transaction qualifying under § 332. All liabilities connected with the assets of Sub2 will be settled out of the proceeds from the sale or disposition of such assets. Distributor will deposit the proceeds from this sale in the Segregated Account.
- (ii) Distributor will adopt a plan of partial liquidation (the "Plan") as soon as is practical after receipt of this private letter ruling.
- (iii) Pursuant to the Plan, Distributor will, within the taxable year in which the Plan is adopted or within the succeeding taxable year, distribute the Net Proceeds pro rata to its shareholders in redemption of the outstanding shares of Distributor stock. To facilitate the distribution of the Net Proceeds, Distributor will merge into Newco, with Distributor surviving, in a reorganization that is intended to qualify under § 368(a)(1)(A) (the "Merger"). As consideration in the Merger, the Distributor shareholders will receive, in exchange for and in proportion to their outstanding pre-Merger shares, a smaller number of post-

Merger shares and cash. The total cash received by all of the Distributor shareholders will equal the amount of the Net Proceeds.

Representations

The taxpayer has made the following representations concerning the Proposed Distribution:

- (a) Distributor and Purchaser will make a joint § 338(h)(10) election with respect to the purchase and sale of Sub1.
- (b) The Proceeds to be distributed are proceeds from the sale of business assets that were actively used in the Discontinued Business and are not attributable to an expansion reserve, a mere business decline, a mere decrease in working capital, the sale of a business that is nominal in relation to the entire business of Distributor, or a business operated at a loss that acquired assets from another business of Distributor. None of the Proceeds are from the sale of assets that, directly or indirectly, are or were idle, passive, or investment assets. None of the Net Proceeds are "substitute assets."
- (c) The distribution in partial liquidation will equal the Net Proceeds. "Net Proceeds" are the amounts realized on the sale of the Discontinued Business, including proceeds from the Asset Sales (the "Proceeds"), reduced by: (i) assets received by Distributor in settlement of the intercompany debt totaling approximately p dollars satisfied in the liquidation of Sub1, to the extent such debt was not satisfied from the sale of the E assets; (ii) debt repayments associated with the D Assets and with the assets of Sub2 settled out of proceeds from the sale or disposition of the D Assets and the assets of Sub2; (iii) taxes and expenses of Distributor attributable to the Asset Sales; (iv) taxes and expenses of Distributor incident to the Proposed Distribution, including any expenses with regard to any investment of the Proceeds, such as the temporary investment of the Proceeds in the Temporary Investments; and (v) any loss of Proceeds as a result of being temporarily invested in the Temporary Investments.
- (d) The Proposed Distribution will be made pro rata to all shareholders of Distributor in accordance with the Plan and in redemption of the outstanding shares of Distributor stock.
- (e) To the extent the assets in the Asset Sales constitute inventory, such assets were substantially similar to, and substantially the same in quantity as, those held during the prior five-year period, and were sold in "bulk" to Purchaser.

- (f) The Proceeds will not include any gain realized from the temporary investment of the Proceeds in the Temporary Investments.
- (g) Distributor will adopt the Plan as soon as practical after the receipt of this private letter ruling. All distributions pursuant to the Plan, including distributions of proceeds from the sale of Sub2, will be made within the taxable year in which the Plan is adopted or within the succeeding taxable year.
- (h) Other than dividends declared and paid in the ordinary course, there will be no declared but unpaid dividends on the Distributor stock at the time of the Proposed Distribution.
- (i) There is no plan or intention to completely liquidate Distributor.
- (j) Distributor has no plan or intention to re-enter the Discontinued Business or to expand its continuing business other than through normal internal growth and acquisition or expansion in the usual course of business.
- (k) There will be no unreasonable delay in effectuating the Proposed Distribution. The time between the receipt of the Proceeds and the Proposed Distribution represents the period reasonably necessary for Distributor to make informed decisions, to obtain legal guidance and governmental rulings, to make appraisals and/or cost and liability determinations, and to take other actions such that the transaction proceeds in an orderly and businesslike manner.
- (l) Following the Proposed Distribution, Distributor will not retain any portion of the Net Proceeds.
- (m) The Proposed Distribution will be made with cash from the Segregated Account that can be traced to the Proceeds received from the Asset Sales. The Proceeds will not include any gain or income earned on the Net Proceeds since the Asset Sales, and will be reduced by any loss on the Net Proceeds since the Asset Sales.
- (n) The amount distributed in the Proposed Distribution will be no greater than the amount of the Net Proceeds.
- (o) Distributor will not use any of the Proceeds in any manner, except that Distributor has invested, or will invest, the Proceeds in the Temporary Investments and Distributor may use the Proceeds for the payment of expenses associated with the sale of the assets of the Discontinued Business, the payment of federal and state income taxes assessed as a result of such sales, and to satisfy the intercompany debt totaling

approximately p dollars. Distributor has not used, and will not use, any of the Proceeds in any of its remaining business activities. Distributor will not distribute any substituted assets in lieu of the Proceeds.

- (p) Management of Distributor knows of no plan or intention on the part of any of Distributor's shareholders to reinvest in Distributor any of the Net Proceeds to be distributed in the Proposed Distribution.
- (q) Management of Distributor is not aware of any plan or intention on the part of its shareholders to transfer the cash received in the Proposed Distribution to another corporation if persons holding more than 20 percent in value of the stock of Distributor also hold more than 20 percent in value of the stock of the recipient corporation. For purposes of this representation, ownership will be determined by application of the constructive ownership rules of § 318 as modified by § 304(c)(3).
- (r) None of the amounts distributed by Distributor in the Proposed Distribution will be received by a shareholder of Distributor as a debtor, creditor, or employee, or in some capacity other than that of a shareholder of Distributor.
- (s) The Net Proceeds in the Proposed Distribution will not include any portion attributable to indebtedness of any liquidating subsidiary to Distributor that was or will be satisfied upon liquidation.
- (t) For tax purposes, the shareholders are receiving nothing except cash in the Proposed Distribution.
- (u) The amount of cash distributed by Distributor to each of its shareholders in the Proposed Distribution will in each instance be equal to the difference between the fair market value of the shares of stock held by such shareholder prior to the Merger and the fair market value of the shares of stock held by such shareholder after the Merger.

Rulings

Based solely on the information submitted and on the representations set forth above, we rule as follows:

- (1) The Proposed Distribution will be treated as a distribution in partial liquidation under §§ 302(b)(4) and 302(e)(1) of the Internal Revenue Code, provided: (i) Distributor and Purchaser have made a valid § 338(h)(10) election for the sale of the assets of the Discontinued Business; and (ii) the Proposed Distribution of the Net Proceeds is made within the taxable year in which the

Plan is adopted or within the succeeding taxable year (§ 1.346-1(a)(2) of the Income Tax Regulations).

- (2) The maximum amount of cash considered to be distributed in the Proposed Distribution will equal the Net Proceeds. This amount will not include any earned or accrued investment earnings on the Proceeds (see Rev. Rul. 60-232, 1960-2 C.B. 115; Rev. Rul. 71-250, 1971-1 C.B. 112; Rev. Rul. 76-279, 1976-2 C.B. 99; Rev. Rul. 76-289, 1976-2 C.B. 100).
- (3) Distributions made pursuant to the Plan to a shareholder who is not a corporation will be treated as in-full payment in exchange for the stock redeemed under section 302(a) of the Code. Gain or loss will be recognized to such noncorporate shareholders to the extent of the difference between the amount distributed in partial liquidation and the adjusted basis of the shares surrendered, as provided in ruling (6) below, in exchange therefore. Provided that Distributor's stock is a capital asset in the hands of such noncorporate shareholders, gain or loss, if any, will be considered capital gain or loss subject to the provisions and limitations of Subchapter P of Chapter 1 of the Code.
- (4) If the amount distributed to shareholders of Distributor in the Proposed Distribution exceeds the Net Proceeds distributed pursuant to ruling (2) above, each shareholder of Distributor, or each person considered to hold Distributor stock under § 302(e)(5), will be treated as receiving the same ratio of the Net Proceeds and any excess. Any amount distributed to the shareholders of Distributor that is not distributed in partial liquidation under § 302(b)(4) may constitute a distribution in redemption under § 302(b)(1), (2), or (3) that will be treated as in full payment for the stock redeemed under § 302(a) or may be treated as a distribution of property under §§ 301 and 316.
- (5) Distributor will not recognize any gain or loss in connection with the Proposed Distribution (§ 311(a)).
- (6) For purposes of the rulings above, the number of shares that will be considered to be redeemed, regardless of the number of shares actually surrendered, for the purpose of determining gain or loss will be determined in accordance with the principles set forth in Rev. Rul. 77-245, 1977-2 C.B. 105.

Caveats

No opinion is expressed about the tax treatment of the Proposed Distribution under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Distribution that are not

specifically covered by the above rulings. In particular, no opinion is expressed regarding whether the § 338(h)(10) election will be a valid election.

Procedural Statements

This ruling letter is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter should be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transaction covered by this ruling letter is consummated. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the ruling letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Lewis K Brickates
Chief, Branch 4
Associate Chief Counsel
(Corporate)

cc: